

Sale of asset within 12 months of distribution

Notice #08-06

Franchise and Excise Tax

August 2008



Highlights

- *The gain on the sale of an asset within 12-months of distribution to nontaxable entity or individual is subject to excise tax.*

- *Public Chapter 1106 amends § 67-4-2007, effective July 1, 2008.*

- *The gain should be reported on FAE170, schedule J, line 4.*



References:

PC 1106, § 37 (2008)
T.C.A. § 67-4-2006
T.C.A. § 67-4-2007
T.C.A. § 67-4-2015

INTRODUCTION

This notice is intended to provide taxpayers and the general public with information concerning the excise tax liability that may result from the distribution of an asset that is subsequently sold within 12-months of such distribution.

When an entity that is subject to excise tax distributes an asset to an entity or individual that is not subject to excise tax, and the asset is sold within 12-months of the date of distribution, any gain or loss not already included in the taxpayer's net earnings or loss for excise tax purposes must be recognized by the taxpayer making the asset distribution. If the taxpayer making the asset distribution ceases to exist prior to the sale, the gain must be reported and taxes paid by the seller in accordance with Tenn. Code Ann. § 67-4-2007(f) as described below.

A 50% penalty for failure to disclose a transaction may be applied for failure to report this gain by the appropriate entity.

DISCUSSION

Tenn. Code Ann. § 67-4-2007(f) requires an entity or individual not otherwise subject to the excise tax to pay tax on the gain from the sale of any asset if any of the following criteria is met:

- 1) The entity or individual received the asset through a distribution from a taxpayer within the 12-month period immediately prior to the sale and the taxpayer making the asset distribution ceased to exist prior to the sale;
- 2) The entity or individual received the asset through a merger, liquidation, or any similar transaction involving a taxpayer subject to the excise tax during the 12-month period immediately prior to the sale;
- 3) The entity or individual qualified for the exemption provided in § 67-4-2008(a)(9) during the 12-month period immediately prior to the sale.

Public Chapter 1106, Section 37 (2008) amends § 67-4-2007(f) to require an otherwise nontaxable entity or individual to report the gain on the sale of an asset that was owned, during the 12-month period immediately prior to the sale, by an affiliate subject to the Tennessee excise tax. This amendment applies to transactions occurring on or after July 1, 2008.

REPORTING REQUIREMENTS

Taxable entities are required to report the gain or loss on schedule J, line 4 (gain) or line 15 (loss) of the franchise and excise tax return.

When an otherwise nontaxable entity or individual is required to report the gain, they must file a franchise and excise tax return, form FAE170, and complete schedules B and C and schedule J, line 4. The entity or individual should include on the front page of the tax return their taxable year, FEIN or SSN, name and address, and mark the block "q- Other" with the explanation "67-4-2007." The tax return and payment are due on the 15th day of the 4th month following the close of the entity's or individual's taxable year. The excise tax due is 6.5% of the gain on the sale of the asset.

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.